

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY VARGO, *individually and*)
BELLA CAPELLI ACADEMY, LLC,)
by Anthony Vargo, a Member,)
Plaintiffs,)

v.)

PAUL G. DESABATO, ANTHONY V.)
DESIMONE, NICHOLAS D'AMICO,)
EUGENE G. SCIULLI, BENJAMIN M.)
PUSATERI, SR. AND BELLA CAPELLI)
ACADEMY, LLC,)
Defendants.)

Civil Action No. 10-1164
United States Magistrate Judge
Cynthia Reed Eddy

REPORT AND RECOMMENDATION

I. RECOMMENDATION

For the reasons set forth below, this Court recommends that the District Court grant Plaintiff Anthony Vargo's Application To Confirm Arbitration Decision (ECF No. 41) entered in regard to the liability issue that was arbitrated, to compel the parties to proceed to the damage phase of the arbitration proceedings within 60 days, and to retain jurisdiction to enforce an arbitration decision.

II. REPORT

On or about June 24, 2011, United States District Judge William L. Standish entered an Order remanding the case "to Arbitration as provided in the Bella Capelli Academy, LLC Operating Agreement executed by the parties," (ECF No. 38), and an Order statistically closing the case for administrative purposes. (ECF No. 39) According to the Application to Confirm, "an Arbitration hearing was held before Arbitrator Harry

M. Paras on the issue of liability only[] [but the] parties agreed that Mr. Paras would also hear the damage portion of the case, if necessary.” Plaintiff further alleges that the Arbitrator rendered a ruling on liability, that over 30 days have elapsed since the Award was delivered to the parties, that “no application to modify, vacate or correct the Award has been made,” and that Defendants have repeatedly denied Plaintiff’s requests “to provide financial records relevant and necessary to the continued Arbitration.” Application to Confirm (ECF No. 41), at ¶¶ 6, 8, 10.

Upon filing the Application to Confirm, the case was assigned to this Court on January 15, 2013, and the Court directed a response by February 8, 2013. No response has been filed. After careful review of the Application to Confirm and attachments thereto, in the absence of any response from Defendants, and in light of Judge Standish’s previous ruling, there is no doubt that Plaintiff’s Application to Confirm and the relief requested therein should be granted.

III. CONCLUSION

It is respectfully recommended that the Arbitrator's Findings and Decisions Regarding Liability Only be confirmed, that the parties be directed to submit the damages issue to the Arbitrator within 60 days, and that the Court retain jurisdiction to enforcement the Arbitrator's decision.

In accordance with the Magistrate's Act, 28 U.S.C. § 636 (b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules for Magistrates, Objections to this Report and Recommendation are due by March 4, 2013. Failure to timely file Objections will constitute waiver of any appellate rights. *Brightwell v. Lehman*, 637 F.3d 187, 193 n.7 (3d Cir. 2011).

/s Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

cc: all ECF registered counsel